PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 28, 2004

Agenda ID #3933
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 01-10-024

This is the draft decision of Administrative Law Judge (ALJ) Halligan. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/a/ ANGELA K. MINKIN by LYNN T. CAREW
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

181175

Decision **DRAFT DECISION OF ALJ HALLIGAN (Mailed 9/28/2004)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development. | Rulemaking 01-10-024 (Filed October 25, 2001) |

# OPINION ADDRESSING PETITIONS TO MODIFY DECISION 03-04-029

## 1. Summary

This decision grants a Joint Petition to Modify Decision (D.) 03-04-029 filed by Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) and a separate request by the California Department of Water Resources (DWR) for a modification to D.03-04-029. This decision also responds to SDG&E's request that the Commission clarify or revise the SDG&E/DWR Operating Agreement with respect to SDG&E's administration of the Williams Energy Marketing and Trading Company (Williams) Contract. In D.02-09-053, we ordered PG&E, SDG&E, and Southern California Edison Company (SCE) to assume the operational, dispatch and administrative functions for certain long-term power supply contracts entered into by the DWR. Today's decision finds that the Reliability Must-Run (RMR) Contract between Williams and the California Independent System Operator (CAISO) is separate and distinct from the DWR contracts allocated to the utilities in D.02-09-053.

Deliveries under the Williams RMR Contract are therefore not subject to the Operating Agreement and any remittances by SDG&E for RMR deliveries are not subject to the terms in the Operating Agreement.

## 2. Background

In D.02-09-053, the Commission ordered PG&E, SDG&E and SCE to assume the operational, dispatch and administrative functions for certain power supply contracts entered into by DWR. The utilities were also ordered to jointly file Operating Agreements with DWR. On December 19, 2002, after several unsuccessful attempts by the utilities and DWR to reach consensus on Operating Agreements, the Commission adopted D.02-12-069, ordering the utilities to enter into and comply with the Operating Orders attached therein. On December 20, 2002, DWR executed an Operating Agreement with PG&E and another with SDG&E. PG&E and SDG&E filed requests for approval of the Operating Agreements on December 20, 2002, respectively.

In D.03-04-029, dated April 3, 2003, the Commission approved, with modifications, the Operating Agreements that DWR executed with PG&E and SDG&E. PG&E and SDG&E submitted advice letters, attaching the modified Operating Agreements, as directed by D.03-04-029.[1] The approved Operating Agreements describe and define the respective duties of the utilities and DWR with respect to the operation and administration of the DWR contracts, including the management of gas tolling provisions and reporting requirements,

[1] SCE did not enter into an Operating Agreement with DWR, and therefore remains subject to the Operating Order adopted in D.02-12-069, as modified by D.03-12-062.

consequences of default, limitations on liability, confidentiality of information, audit rights and dispute resolution.

### 3. The Joint Petition

On April 17, 2003, PG&E and SDG&E filed a Joint Petition to Modify D.03-04-029. PG&E and SDG&E request that the Commission authorize them to make certain changes to the Operating Agreements designed to conform the two agreements and correct unintentional errors in the previously approved Operating Agreements. The changes are indicated in a "redline" version of the Operating Agreements attached to the Joint Petition.

PG&E and SDG&E state that DWR agrees with the changes recommended in the Joint Petition and that, following Commission approval, PG&E and SDG&E will enter into modified Operating Agreements with DWR and submit them to the Commission through compliance advice filings, at which time they would supersede the executed Operating Agreements.

Under Rule 47 (f) of the Commission's Rules of Practice and Procedure, responses to petitions for modification must be filed within 30 days of the date that the petition was served. No party filed a response to the Joint Petition, and the matter is uncontested.

The majority of the changes requested are corrections to unintentional typographical errors identified by PG&E and SDG&E and can be approved without further discussion. However, three of the requested modifications involve substantive changes to the Operating Agreements.

First, PG&E and SDG&E request certain revisions to the definition of Energy Delivery Obligations in Exhibit C of the Operating Agreements to make the two agreements consistent. As noted in the red-line revisions provided in the Joint Petition, in order to make the two agreements and the order consistent on

this point, it is necessary to revise the PG&E- DWR Operating Agreement to add "all pumping loads" and clarify both Operating Agreements such that the definition of "wholesale obligations" consists of those wholesale obligations "existing as of January 1, 2003."

Second, PG&E and SD&GE request a revision to the definition of Utility Supply for purposes of calculating the Surplus Energy Percentage in Exhibit C of the Operating Agreement. The revised Exhibit C would be modified to read: "Utility Supply is total energy dispatched from utility retained generation, new Utility contracts and Utility market purchases with adjustments for transmission losses, existing wholesale obligations, Western Area Power Administration load, Ancillary Services and ISO Instructed Energy, exchange transactions, all pumping loads, and ISO Uninstructed Energy…"

Finally, PG&E and SDG&E request revisions to the definitions of "Uninstructed Retail Load Deviations" and "Uninstructed Supply Deviations" in Exhibit C of both Operating Agreements to clarify that load or supply deviations will be calculated net of any positive or negative uninstructed supply deviations and to make the PG&E and SDG&E agreements uniform. The revisions do not alter the determinations in D.03-04-029 regarding who is responsible for the load or supply deviations for purposes of pro rata share calculation.

Having reviewed the requested modifications, we find that the modifications should be granted. The first and second requested modifications serve to better align the definition of "Energy Delivery Obligations" and "Utility Supply" in the Operating Agreements with the definitions included in the

D.02-12-069, the Operating Order applicable to Southern California Edison and between the two Operating Agreements. We agree with PG&E and SDG&E that the definitions of Energy Delivery Obligations and Utility Supply should be consistent among the three utilities to the extent possible and will grant PG&E and SDG&E's request. The third set of substantive revisions simply provide more detail to the definitions of Uninstructed Load Deviations and Uninstructed Supply Deviations without changing the determination of who is responsible for pro rata share calculations.

The modifications requested by PG&E and SDG&E in the red-line versions of the Operating Agreements attached to their April 17, 2003 Joint Petition are approved. PG&E and SDG&E should modify the Operating Agreements consistent with this decision and file the executed Operating Agreements with the Commission as directed below.

## 4. DWR's April 17, 2003 Memorandum

On April 17, 2003, DWR submitted a memorandum requesting that the Commission consider two modifications to D.03-04-029 and the Operating Agreements. Procedurally, DWR's April 17, 2003, memorandum will be treated as a Petition for Modification of D.03-04-029.

In its Petition, DWR requests that the Commission modify two sections of the Operating Agreements to clarify that the Commission does not exercise jurisdiction over DWR and that certain commercial disputes that are not Commission jurisdictional may be resolved before a court of law or other appropriate forum.

DWR requests that the Commission modify Section 2.02 of the Operating Agreement, to add the following language:

"In addition, the Parties acknowledge that DWR is not subject to the Commission's jurisdiction, and the Parties agree that none of the provisions of this Agreement, including Section 13.04 herein, shall be interpreted to subject DWR to the Commission's jurisdiction or authority."

DWR also requests that the Commission revise Section 13.04, to provide:

> "If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, and the dispute related solely to Utility's conduct, performance, acts and/or omissions (and not to DWR's conduct performance, acts and/or omissions), then DWR may at its sole discretion, present the dispute to the Commission for resolution, in accordance with Applicable Law. All other disputes shall be brought in a court of competent jurisdiction or a forum mutually acceptable to the parties in accordance with Applicable Law. Nothing herein shall preclude either party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing."

DWR represents that PG&E and SDG&E do not object to DWR's requested modifications. In their April 17, 2003 Joint Petition, PG&E and SDG&E state that they have "reviewed a proposed change DWR has indicated it will request to the Operating Agreement…" and "will not object to incorporating [DWR's proposed changes] into their respective Operating Agreements."[2] No party filed a response to DWR's memorandum.

We have reviewed DWR's requested modifications and find that the modifications would provide additional clarity to the Operating Agreements. In addition, the modifications appear to be agreed to by all parties to the Operating Agreements. No party opposes the modifications. DWR's Petition is granted.

### 5. SDG&E's Petition to Modify

On June 13, 2003, SDG&E filed a Petition to Modify D.03-04-029. SDG&E requests that the Commission confirm that SDG&E has properly tied to the

[2] PG&E/SDG&E Petition to Modify D.03-04-029, dated April 17, 2003, p. 2.

Huntington Beach Units 1 and 2 quantities and net revenues for energy delivered during a CAISO RMR dispatch notice and excluded these deliveries from pro rata sharing.

On June 20, 2003, the Administrative Law Judge (ALJ) issued a ruling directing parties to file comments on SDG&E's Petition.[3] SCE and DWR filed comments on July 1, 2003. SDG&E, SCE and PG&E filed reply comments on July 8, 2003.

### 5.1 Background

In D.02-09-053, the Commission allocated DWR's long-term power supply contracts to the utilities. Among the contracts allocated is the Williams contract entered into by DWR on February 16, 2001. The original Williams contract delivered up to 1,400 megawatts (MW) of must-take energy products to SP-15 delivery points (i.e., delivery points south of Path 15). The Commission allocated the original Williams contract to SDG&E.

On November 11, 2002, the Williams contract was amended. The amended contract delivers 60% less must take energy and up to 1,175 MWH of dispatchable capacity. The must-take energy is delivered to SP-15. The dispatchable capacity ("Product D") is delivered to the bus bar of the facilities that produce the power, Huntington Beach Units 1 and 2, (the "Huntington Units") which are within SCE's service territory.

The Huntington Units are subject to a RMR contract between the CAISO and Williams that has been in place since April 1998. Under the Williams RMR

[3] The ALJ ruling also addressed the allocation of the Williams Gas Supply Contract which was addressed in D.03-10-016, dated October 2, 2003.

contract, the CAISO may "call" upon the Huntington Units at any time to support grid reliability on SCE's system. Generally, the costs incurred by the CAISO under each RMR contract are payable to the CAISO by the responsible utility[4] in whose service area the RMR generating units are located.

### 5.2 SDG&E's Request

SDG&E requests that the Commission clarify the SDG&E-DWR Operating Agreement to provide that SDG&E has been calculating the remittance amount for RMR energy delivered from the "Huntington Units" at the hourly ex post market clearing price in a fashion consistent with the Commission's Decisions and the SDG&E-DWR Operating Agreement. Alternatively, SDG&E requests that the Commission modify Exhibit C of the SDG&E-DWR Operating Agreement to explicitly state that RMR energy is to be treated like CAISO Instructed Energy. [5]

SDG&E's position is that it is not obligated to take the RMR deliveries, but that it has taken delivery of the dispatched RMR energy as an "accommodation" to Williams, the CAISO and DWR, to prevent the energy from being dumped into the ISO's real time market and priced at zero dollars, and accepted it to serve retail customers within its service area when RMR deliveries are instructed by the CAISO. SDG&E explains that it has treated this RMR energy as a market

---

[4] The CAISO tariff defines a "responsible utility" as "the utility in whose service areas the RMR unit is located or whose service area is contiguous to the service areas in which a reliability must-run unit owned by an entity outside of the CAISO controlled grid is located. "

[5] Specifically, SDG&E requests modifications to Exhibit C, titled Settlement Principles for remittances and Surplus Revenue, of the SDG&E-DWR Operating Agreement.

purchase and informed DWR that remittances to DWR associated with the RMR energy would be calculated based on the CAISO's SP-15 hourly ex post market price for instructed energy (approximately $42 per MW hour during January-April 2003).

SDG&E maintains that it has treated the energy delivered under the RMR contract similar to other must-take energy purchases, for the purpose of scheduling, in that it would displace energy that SDG&E would otherwise have economically dispatched. SDG&E believes that treating this energy as resource-specific and pricing it at the hourly ex post market price for energy is analogous to the treatment of CAISO Instructed Energy[6] in the SDG&E-DWR Operating Agreement and complies with the relevant Commission decisions on procurement.

SDG&E's arguments are twofold. First, SDG&E states that DWR fails to identify any provisions in the Williams contract that support its allegation that the Williams RMR energy was sold to DWR as a component of Product D. SDG&E notes that Section 3(a) of the Product D component of the DWR-Williams Contract recognizes the pre-existing RMR contract by stating the DWR has the right to dispatch the Huntington Units and utilize net electric energy "except to the extent a Designated Unit is dispatched by the CAISO." In addition, SDG&E

[6] Exhibit C of the SDG&E-DWR Operating Agreement provides that CAISO Instructed Energy is a transaction where certain qualifying resources are able to sell energy from unused capacity to the CAISO in the real time market. The energy delivered from these resources is directed by the CAISO in real time to balance supply and load imbalances on the grid. Because ISO Instructed Energy is resource-specific and does not serve the retail load of any utility, ISO Instructed Energy is not considered a joint utility/DWR portfolio transaction for the purpose of remittance determination.

notes that Section 8(f)(i) states that "[n]otwithstanding any provision herein, [DWR's] right and obligations shall at all times be subject to any Must-Run Agreement (MRA)[7] applicable to any Designated Unit."

SDG&E also notes that the payment provisions in Section 7(c) of Product D recognize that Williams should be paid by the CAISO (and indirectly by SCE as the Responsible Utility) and not by DWR for RMR capacity and energy products delivered pursuant to an CAISO dispatch notice issued for the exclusive benefit of maintaining the local reliability of SCE's service territory. SDG&E contends that the DWR-Williams Contract thus recognizes the distinct and separate nature of the products that Williams is providing to the CAISO and DWR.

SDG&E states that its interpretation of the DWR-Williams Contract is that the RMR energy produced by the Huntington Units is a product for Williams to market. As support for its position, SDG&E states that, under the RMR contract, the generator can select between two payment options for RMR energy: a "contract path" payment option or a "market path" payment option. According to SDG&E:

> "Under the RMR Contract, if Williams selects the "contract path" for payments of its variable costs, then the energy is sold by Williams into a market other than the CAISO's real time market and SCE is ultimately responsible for the variable energy costs, less any applicable credits. These credits are calculated by Williams based on the revenues it receives from the market transaction for billable megawatt hours (MWhs), as set forth in Section 9.1(e) of the RMR contract. However, if Williams selects the "market path" then SCE

[7] In its Petition SDG&E refers to the MRA in the CAISO tariff as a Reliability Must-Run, or "RMR," Agreement. The "Must-Run Agreement" or MRA referred to above and the RMR Agreement referred to by SDG&E are one and the same.

> bears no cost responsibility for RMR energy and Williams' only source of revenue to reimburse it for its variable costs to generate RMR-related energy is from a market transaction." (SDG&E Petition, p. 3-4)

Thus, under the "market path" option selected by Williams the revenue received by Williams for its variable costs is the amount payable by SDG&E. Although DWR has informed SDG&E that it believes the "market path" option is appropriate since Product D was allocated to retail customers served within SDG&E's service area, SDG&E maintains that the DWR-Williams contract did not state that this election right was assigned to DWR and the RMR energy product was sold to DWR.

Second, SDG&E argues that even if the Commission were to find that Williams RMR energy is a component of Product D, D.03-04-029 requires SDG&E to reimburse DWR for the RMR energy at a remittance rate reflecting economic dispatch, not DWR's retail remittance rate. SDG&E states that DWR fails to address how valuing RMR energy at the retail remittance rate can be reconciled with the least cost dispatch requirements adopted in D.02-09-053, D.02-10-063, D.02-12-074, and D.03-04-029.

SDG&E states that, in essence, DWR is asking that this RMR energy be treated as first-in-line energy quantities to be sold to the retail customers served by SDG&E and DWR at the retail remittance rate for the purposes of booking revenues into DWR's account. SDG&E explains that the Commission explicitly rejected this position in D.02-09-053, D.02-12-069, and D.03-04-029 and instead directed SDG&E to dispatch the allocated contracts and utility retained generation as a combined portfolio using least cost dispatch principles.

According to SDG&E, under the pro-rata sharing policy adopted in D.02-09-053, SDG&E is charged with dispatching its combined generation

portfolio on a least-cost basis, with least-cost generation resources dispatched to meet retail load and the remainder dispatched as surplus. SDG&E is only responsible for paying DWR the retail remittance rate for the proportion of DWR generation dispatched to meet the utility's retail load. Surplus sales revenues are prorated between the utility's revenue requirements and DWR's revenue requirements based on the relative quantities dispatched from utility generating assets (including contracts and market purchases in the future) and the DWR contracts. In this case, SDG&E argues, the RMR generation would necessarily be uneconomic and would therefore displace generation that would otherwise be dispatched on a least cost basis.

Finally, SDG&E points out that because DWR would have SDG&E pay the retail remittance rate for power that is dispatched out of economic order, DWR's position is inconsistent with Section 2.02(a) (Standards of Contract Administration) and Article I of Exhibit A (Resource Commitment and Dispatch) of the Operating Agreement. According to SDG&E, these provisions require SDG&E to "perform its dispatch functions in a commercially reasonable manner, exercising Good Utility Practices, and in a fashion reasonably designed to serve the overall best interests of retail electric customers." (SDG&E Petition, p. 6.)

### 5.3 DWR's Position

DWR requests that the Commission deny SDG&E's June 13, 2003 petition and direct SDG&E to "dispatch, schedule and remit Power Charges to DWR at the Commission established remittance rate for RMR energy associated with the Williams contract."[8] DWR believes that SDG&E's calculation of remittances to

[8] DWR Memorandum, dated July 1, 2003, p. 3.

DWR based on the CAISO's SP-15 hourly ex post market price for instructed energy violates D.02-09-053 and Assembly Bill 1 of the First Extraordinary Session of 2001 (AB 1X, Stats. 2001, Ch.4) and creates an administrative burden on DWR. DWR further argues that D.02-09-053 requires SDG&E to administer the Williams contract, of which DWR argues, the RMR component is an integral part.

DWR argues that since the energy was delivered by DWR for retail use, SDG&E should compensate DWR at the Commission-approved retail remittance rate for the power. DWR argues that the under the RMR component of the contract, the energy is must take for DWR and DWR is obligated to schedule that energy to a load. DWR also states that it is financially responsible for 100% of the RMR power produced under the Williams contract and is entitled to the entire power output of all Williams Product D generating units.

### 5.4 SCE

SCE presents no opinion on the merits of SDG&E's request, but notes that it opposes any amendment or renegotiation of a contract by DWR that increases ratepayer costs or decreases the value of the contracts.

## 6. Discussion

SDG&E's request and DWR's response identify a threshold question for our consideration; namely, were deliveries under the Williams RMR contract allocated to SDG&E along with the rest of the DWR-Williams contract?

D.02-09-053 requires the utilities to assume all operational, dispatch and administrative functions for the DWR contracts allocated to their portfolios (D.02-09-053, Ordering Paragraph 2). These functions include "day-ahead, hour-ahead and real-time trading, scheduling transactions and with all involved parties (e.g., suppliers, the ISO and transmission providers), making surplus

sales, preparing forecasts and obtaining relevant information for these functions, such as transmission availability." (*Id.*, at p. 45). However, these requirements only apply to the DWR long-term power supply contracts that have been allocated to the utilities. As discussed in D.02-09-053, we adopted a contract allocation that achieved an appropriate balance among the competing proposals in terms of the allocation of contract capacity, energy, residual net short, and other comparison metrics presented by the parties. None of the allocation proposals submitted in response to the April 2, 2002 Assigned Commissioner Ruling in Rulemaking (R.) 01-10-024 which led to the issuance of D.02-09-053 addressed the RMR contracts, nor were the RMR contract deliveries raised by DWR in its December 3, 2002, request to reallocate the Williams contract to SCE.[9]

Although DWR maintains that the RMR component is intended to be an integral part of the Williams contract, DWR does not reference decision language demonstrating that our allocation of the original Williams contract, or our subsequent refusal to reallocate Product D of the renegotiated Williams contract, contemplated an allocation of the RMR energy. Nor does DWR provide any evidence demonstrating that DWR is a party to the RMR contract. Finally, DWR does not cite to any contract language or Commission decision that supports its position that SDG&E is responsible for administration of the Williams RMR contract.

In contrast, as SDG&E points out, Product D of the renegotiated Williams contract specifically notes that the RMR energy is subject to a separate

[9] The Commission denied DWR's request to reallocate Product D of the Williams contract in D.03-06-069, finding that the requested reallocation would dramatically alter the balance achieved in D.02-09-053.

agreement. In addition, DWR's claim that D.02-09-053 and the Operating Agreement require SDG&E to "administer" the Williams RMR contract is belied by the fact that SDG&E does not appear to have the authority to fully administer the RMR contract. For example, SDG&E is not able to select whether the "contract path" option or the "market path" option is the optimal choice under the least-cost dispatch requirements.

Based on the facts presented, we believe that the RMR contract between Williams and the CAISO is outside the ambit of the products allocated to the utilities in D.02-09-053. The RMR contract is a contract between Williams and the CAISO that is separate and apart from the DWR-Williams contract that was allocated to SDG&E in D.02-09-053 and is therefore not subject to the SDG&E-DWR Operating Agreement.

DWR argues that SDG&E's request contravenes Water Code Sections 80110 and 80112, which provide that DWR shall retain title to all power sold by it to retail end-use customers and that all money paid with respect to any sale of power acquired under Division 27 of the Water Code shall constitute the property of DWR. Based on this premise, DWR states that remittances should be made at the retail rate set forth in the DWR revenue requirement decision (D.02-12-045, as amended by D.02-12-052 and D.03-03-031). SDG&E does not dispute that it received the RMR energy from the Huntington Units. However, the problem with DWR's argument is that it is not clear that the power that has been supplied to SDG&E under the RMR contract has been supplied by DWR. As noted above, DWR does not cite to any contract language that supports its claim that DWR, rather than Williams, is a counterparty to the Williams RMR contract. SDG&E suggests that Williams, rather than DWR, holds title to the RMR energy, and DWR, in turn, is entitled to the revenue produced by the sale

of the RMR energy. As SDG&E points out, the payment provisions in Section 7 (c) of Product D of the Williams contract state that Williams should be paid by the CAISO (and indirectly by SCE as the Responsible Utility) and not by DWR.

On a fundamental level, if the power is supplied by Williams pursuant to the RMR Contract, and Williams has chosen the "market" path, then Williams, and in turn, DWR (if it is entitled to the revenues from the RMR contract), is entitled to whatever market price it can achieve. It does not follow that SDG&E should be required to purchase this power, nor does it follow that SDG&E should be required to pay more than the market rate for this power. We agree with SDG&E that if the energy is being sold by Williams, and not DWR, this approach does not violate any provisions of AB1X. Finally, we believe that further misunderstandings of this nature can be avoided if SDG&E does not take RMR energy that is really SCE's obligation to schedule as the "responsible utility" in the area in question. Although SDG&E has "accommodated" Williams, CAISO, DWR, and SCE by taking delivery of RMR energy to date, we do not believe this accommodation should continue. In our view, since the primary purpose of the Williams RMR Contract is to support local reliability in SCE's service territory, a more appropriate method of dealing with the RMR energy would be to have SCE schedule the energy.

For these reasons, we deny SDG&E's petition and clarify that the RMR Contract is not among the DWR Contracts allocated to the utilities in D.02-09-053. In doing so, we emphasize that it is the utilities' responsibility to use least cost dispatch criteria, taking into account both their own direct costs, and the costs associated with system and local area reliability.

## 7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Public Utilities Code Section 311 (g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

## 8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commission and Julie M. Halligan is the Assigned ALJ in this proceeding.

## Findings of Fact

1. The modifications requested in the April 17, 2003 Joint Petition filed by SDG&E and PG&E would improve the Operating Agreements by making them more consistent and by removing unintentional typographical errors.

2. The modifications requested in DWR's April 17, 2003 memorandum would clarify the Operating Agreements to state that the Commission does not have jurisdiction over DWR and that those disputes that are not Commission jurisdictional should be resolved in a court or other appropriate forum, rather than requiring all commercial disputes regarding the Operating Agreement to come before the Commission.

3. The requirement that the utilities assume all operational, dispatch and administrative functions for the DWR contracts applies only to those DWR long-term power supply contracts allocated to the utilities in D.02-09-053.

4. DWR has not presented sufficient evidence demonstrating that the Williams RMR contract was allocated to SDG&E.

5. The record does not support DWR's claim that the Williams RMR contract was allocated to SDG&E as part of D.02-09-053.

6. The Williams RMR contract is a contract between Williams and the CAISO that is separate and apart from the DWR-Williams contract that was allocated to SDG&E in D.02-09-053.

7. The Williams RMR contract is outside the ambit of the products allocated to the utilities in D.02-09-053.

8. Nothing in D.02-09-053 requires SDG&E to administer the Williams RMR contract.

## Conclusions of Law

1. The Joint Petition to Modify D.03-04-029 filed by SDG&E and PG&E on April 17, 2003 is in the public interest and should be granted.

2. The April 17, 2003 Petition of DWR for Modification to D.03-04-029 is in the public interest and should be granted.

3. The Williams RMR contract is not subject to the SDG&E-DWR Operating Agreement.

4. The Petition for Modification filed by SDG&E on June 13, 2003 should be denied.

5. As modified to include the revisions requested by PG&E and SDG&E in their Joint Petition, the Operating Agreements are in the public interest and should be approved.

6. As discussed in this decision, SDG&E's request that the Commission clarify, or in the alternative, modify D.03-04-029 to state that SDG&E has been correctly calculating and remitting revenues associated with the Williams RMR contract should be denied because the Williams RMR contract deliveries are not subject to D.03-04-029.

7. The Commission should permit PG&E and SDG&E to file the executed Operating Agreements, modified as discussed herein, as compliance advice letters within fourteen days of the effective date of this decision.

## O R D E R

**IT IS ORDERED** that:

1. The Joint Petition to Modify Decision (D.) 03-04-029 filed by San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company PG&E) on April 17, 2003 is granted.

2. California Department of Water Resource's (DWR)'s request to modify Section 2.02 of the Operating Agreement is granted as follows:

(a) Section 2.02 of the Operating Agreement adopted in D.03-04-029 shall be modified to state:

> "In addition, the Parties acknowledge that DWR is not subject to the Commission's jurisdiction, and the Parties agree that none of the provisions of this Agreement, including Section 13.04 herein, shall be interpreted to subject DWR to the Commission's jurisdiction or authority."

(b) Section Section 13.04 of the Operating Agreement adopted in D.03-04-029 shall be modified to state:

> "If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, and the dispute related solely to Utility's conduct, performance, acts and/or omissions (and not to DWR's conduct performance, acts and/or omissions), then DWR may at its sole discretion, present the dispute to the Commission for resolution, in accordance with Applicable Law. All other disputes shall be brought in a court of competent jurisdiction or a forum mutually acceptable to the parties in accordance with Applicable Law. Nothing herein shall preclude either party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing."

3. PG&E and SDG&E are hereby permitted to file the executed Operating Agreements, modified as requested in the April 17, 2003 Joint Petition of PG&E and SDG&E and the April 17, 2003 memorandum submitted by DWR, as compliance advice letters within 14 days of the effective date of this decision.

4. If PG&E or SDG&E choose not to file executed Operating Agreements, they shall remain subject to the Operating Agreements approved in D.03-04-029.

5. SDG&E's June 13, 20003 request that the Commission clarify, or in the alternative, modify, D.03-04-029 to state that SDG&E has been correctly calculating and remitting revenues associated with the Williams Energy Marketing and Trading Company Reliability Must-Run (RMR) contract is denied.

This order is effective today.

Dated _____, at San Francisco, California.